SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 556

W. B. WORTHEN COMPANY, BANKERS, AS TRUSTEE, EX REL. THE BOARD OF COMMISSIONERS OF STREET IMPROVEMENT DISTRICT No. 513 OF THE CITY OF LITTLE ROCK, ARKANSAS, ET AL., APPELLANTS,

vs.

COBURN C. KAVANAUGH, TRUSTEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

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IN SUPREME COURT OF ARKANSAS

W. B. Worthen Company, Bankers, as Trustee, ex rel. the Board of Commissioners of Street Improvement District No. 513 of the City of Little Rock, Arkansas, and C. S. Smart and W. H. Miller, as Bondholders, Appellants,

vs.

Delinquent Lands, Appellee

Stipulation as to Record on Appeal to the Supreme Court of the United States—Filed Nov. 12, 1934

It is stipulated and agreed by and between the appellants and the appellee that in preparing the record upon appeal of this cause to the Supreme Court of the United States from the final decree and decision of the Supreme Court of Arkansas entered in said cause in favor of the appellee, the Clerk of the Supreme Court of Arkansas shall include in such record the following:

1. Original of this stipulation.
2. A copy of the complaint in equity in the Chancery Court of Pulaski County and Exhibit A thereto, omitting the names of the defendants other than C. C. Kavanaugh, Trustee, and the descriptions of the property and amounts set opposite their names on the third page of the complaint.
3. A copy of the answer of C. C. Kavanaugh, Trustee.
4. A copy of the demurrer.
5. A copy of the decree of the Pulaski Chancery Court.
6. A copy of the opinions and decree of the Supreme Court of Arkansas.
7. The original petition for appeal to the Supreme Court of the United States, assignment of errors and prayer for reversal.
8. The original order allowing the appeal.

[fol. 2] 9. A copy of the cost bond and its approval.

10. The original citation with acceptance of service and appellee's entry of appearance in the Supreme Court of the United States thereon.
11. Certificate of the Clerk showing the filing of the bond and the lodgment of the copies of the petition for appeal,

[fol. 5] The plaintiff C. S. Smart is the holder of Bond No. 7, and the plaintiff W. H. Miller is the holder of two coupons for $55 each, maturing on the 1st day of July, 1934, which coupons are attached to unmatured Bonds Nos. 19 and 22 for $1,000 each held by him. They bring this suit on behalf of themselves and of all other bond and coupon holders who hold their bonds and coupons of the same maturities overdue and unpaid.

The defendants hereinafter named are the owners of the real property hereinafter described and set opposite their names, which have a rental value, and the assessments due thereon and unpaid at this time are as follows:

For the Year 1932

Owner	Lot	Block	Tax
C. C. Kavanaugh, Trustee	7-8-9-10	7 City of Little Rock	$191.10

• • • • • • •

For the Year 1933

Owner	Lot	Block	Tax
C. C. Kavanaugh, Trustee	7-8-9-10	7 City of Little Rock	$191.10

• • • • • • •

To each of said amounts due, there should be added a penalty of twenty per cent and a reasonable attorney's fee and costs, as authorized by Sections 5673 and 5678 of Crawford & Moses' Digest.

[fol. 6] On the 8th day of July, 1932, notice was duly published by the City Collector as required by Section 5671 of Crawford & Moses' Digest, that the assessments in said district for the year 1932 were required to be paid within thirty days from that date, and on the 8th day of July, 1933, notice was also duly published that the assessments for the year 1933 were required to be paid within thirty days from that date. Returns of the above delinquent assessments were duly made to the said Board of Commissioners by the Collector as required by law.

Plaintiffs are entitled to a decree charging each of said lots as delinquent with the respective amounts of the assessments set opposite each, together with said penalty of

twenty per cent, a reasonable attorney's fee and costs of this suit. Said decree should also direct that if the amount adjudged against each respective lot be not paid within ten days, said property be condemned and sold upon twenty days' notice, as required by Section 5684 of Crawford & Moses' Digest; that upon the approval of the sale, the Commissioner execute and deliver to the purchaser a certificate of purchase, as required by Section 5691 of said Digest; that if not redeemed within two years from date of the sale by the payment of the purchase price and ten per cent interest, the Commissioner execute and deliver a deed to the purchaser or his assignee, as authorized by Section 5692 of said Digest and also by Section 5644 of said Digest, as amended by Section 2 of Act 359 of 1925 giving two years in which to redeem; that immediately [fol. 7] on the delivery of the certificate of purchase, the purchaser or his assignee have possession of the land and premises pending the redemption without accountability for rents if redemption is made, as authorized by Section 5642 of said Digest.

All of the statutes of the State of Arkansas hereinbefore referred to were in force at the time the bonds aforesaid were issued and at the time that they were sold to the present holders thereof, who purchased the same in good faith before maturity for a price at least equal to par and entirely in reliance upon the provisions of said statutes as security. But for said statutes, said bonds could never have been sold and the present bondholders would never have purchased the same.

Wherefore, the plaintiffs pray that a decree as described above be entered, for costs and all other proper relief.

Rose, Hemingway, Cantrell & Loughborough, Solicitors for Plaintiffs.

[fol. 8] EXHIBIT "A" TO COMPLAINT

Know All Men by These Presents:

That whereas Street Improvement District Number 513, of the City of Little Rock, County of Pulaski, and State of Arkansas, has executed its coupon bonds payable at the office of W. B. Worthen Company, Bankers, in the City of Little Rock, Arkansas as follows:

Nos. of Bonds	Denominations	Amount	Maturity
1	$400	$400	January 1, 1931
2	1,000	1,000	January 1, 1931
3	1,000	1,000	January 1, 1932
4	500	500	January 1, 1932
5	1,000	1,000	January 1, 1933
6	500	500	January 1, 1933
7	1,000	1,000	January 1, 1934
8	500	500	January 1, 1934
9 and 10	1,000	2,000	January 1, 1935
11 and 12	1,000	2,000	January 1, 1936
13 and 14	1,000	2,000	January 1, 1937
15 and 16	1,000	2,000	January 1, 1938
17 and 18	1,000	2,000	January 1, 1939
19 and 20	1,000	2,000	January 1, 1940
21	500	500	January 1, 1940
22 and 23	1,000	2,000	January 1, 1941
24	500	500	January 1, 1941
25 and 26	1,000	2,000	January 1, 1942
27	500	500	January 1, 1942
28 and 29	1,000	2,000	January 1, 1943
30	500	500	January 1, 1943
31 and 32	1,000	2,000	January 1, 1944
33	500	500	January 1, 1944
34 to 36 inclusive	1,000	3,000	January 1, 1945

bearing interest at the rate of five per cent per annum payable semi-annually, evidenced by coupons thereto attached, said bonds being in denominations of $1,000, $500 and $400, bearing date of July 1, 1930, and being in the following form, except as to denominations and dates of maturity:

[fol. 9] United States of America

State of Arkansas

County of Pulaski

City of Little Rock

Street Improvement District Number 513

5% Improvement Bond

No. —— $——

Know All Men by These Presents:

That Street Improvement District Number 513, of the City of Little Rock, County of Pulaski and State of

Arkansas, acknowledges itself to owe and for value received promises to pay to bearer —— Dollars, in gold coin of the United States of America, of the present standard of weight and fineness, on the first day of January 19—, with interest thereon from the first day of July, 1930, at the rate of five per centum per annum, payable semi-annually on the first day of January and July of each year, on presentation and surrender of the annexed coupons as they severally mature. Both principal and interest of this bond are hereby made payable at the office of W. B. Worthen Company, Bankers, in the City of Little Rock, and State of Arkansas.

This is one of a series of thirty-six (36) bonds, aggregating Thirty-One Thousand Four Hundred Dollars ($31,400), all of like tenor, except as to denominations and maturities, and numbered from one (1) to thirty-six (36), inclusive, [fol. 10] issued for the purpose of widening and repaving streets within said district, and the said Street Improvement District Number 513 hereby covenants that the said District has been duly organized in accordance with Sections 5647 to 5743 of Crawford & Moses' Digest of the Statutes of the State of Arkansas and the Acts amendatory thereof, including Act No. 64 of the General Assembly of the State of Arkansas of the year 1929, entitled "An Act to Simplify the System of Organizing and Administering Local Improvement Districts in Cities and Towns", approved February 28, 1929, under ordinances duly passed by the City Council of the said City of Little Rock for that purpose; that the real property in said district has been duly assessed as required by law for the making of the improvement aforesaid; that said assessment of benefits has been duly pledged and mortgaged for the security of this bond; and that all acts, conditions and things required to be done precedent to and in the issuing of this bond have existed, have happened and have been performed as required by law. This bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by W. B. Worthen Company, Bankers, of Little Rock, Arkansas.

The faith, credit, assessed benefits and other resources of the district are pledged for the payment of this bond and interest thereon.

In Witness Whereof said Street Improvement District Number 513 has executed this bond by the hands of its Commissioners and attested it with its corporate seal, and has

caused the coupons hereto attached to be authenticated by [fol. 11] the facsimile signature of its chairman, as of the first day of July, 1930.

Street Improvement District Number 513 of the City of Little Rock, Arkansas, by —— ——, Commissioners. Attest: —— ——, Secretary.

On the back of said bonds is to appear the following:

Certificate

This is to certify that this bond is one of a series of thirty-six (36) bonds of like tenor and effect, except as to denomination and maturity, mentioned and described on the face hereof.

W. B. Worthen Company, Bankers, by —— ——.

Little Rock, Arkansas, ——.

To each of said bonds are attached coupons for the semi-annual interest in the following form:

$—— No. —

On the first day of July, [January] 19—, Street Improvement District Number 513 of the City of Little Rock, Arkansas, will pay to bearer —— Dollars in gold coin, at the office of W. B. Worthen Company, Bankers, in the City of Little Rock, Arkansas, being six months interest then [fol. 12] due on its bond dated July 1, 1930, and numbered —.

—— ——, Chairman.

(The signature of the Chairman to the coupons attached to said bonds may be lithographed or engraved.)

Now, therefore, in consideration of the sum of One Dollar, and other good and sufficient considerations, and for the purpose of securing the payment of each and all of the aforesaid bonds and the interest coupons thereto attached as they severally mature, the said Street Improvement District Number 513 does hereby pledge, mortgage, assign, transfer and set over to W. B. Worthen Company, Bankers, of Little Rock, Arkansas, as Trustee, its entire assessment of benefits and all assessments of benefits that may hereafter be made upon the real property of said district, and

also all uncollected assessments levied by the ordinance of the City Council of the said City of Little Rock passed and approved on the 26th day of May, 1930, being Ordinance No. 4617, entitled "An Ordinance Assessing the Value of the Benefits to be Received by the Owners of Each of the Several Lots, Blocks and Parcels of Land Within Street Improvement District No. 513", together with all assessments that may have been levied by any other ordinance, or may hereafter be levied upon the real property in said district, as the same now stands or as the same may hereafter be readjusted; and in case any property owner makes default in the payment of any assessment, it undertakes that its board of improvement will promptly institute proceedings for the collection thereof, and that in case of their [fol. 13] default in so doing, the said Trustee may institute such action in the name of said Board and at the expense of the said Street Improvement District Number 513.

The District covenants that it will promptly make, and cause to be made, any further levies of taxes upon its assessment of benefits that may be necessary to pay the said bonds with interest when due. It further covenants that its commissioners will keep continually informed of the collections of its taxes, and if at any time there is a probability that the taxes levied will prove inadequate to pay the bonds and coupons of the district as they mature, the commissioners will levy or cause to be levied such further taxes as may be necessary to prevent a default.

Said District further agrees that if default is made in the payment of any bond or coupon, the said trustee may declare the entire debt or any part thereof due and shall do so on request of a majority in amount of the holders of the bonds secured by this pledge and may institute in any court having chancery jurisdiction, a proceeding for the foreclosure of this pledge, and in such proceeding it is agreed that such court shall, at the request of said trustee, appoint a receiver to collect all of said assessments and all assessments that may hereafter be levied by said council of the said city.

At the time of the entry of the decree in any suit brought by the said trustee, judgment may be entered in favor of the trustee for the entire amount of the bonds then outstanding, with interest due thereon, such judgment to be [fol. 14] for the equal benefit of all the holders of the bonds and coupons hereby secured.

And said District further agrees that if the assessments now levied should prove insufficient to pay for the work, and the said city council should fail to levy further assessments as required by law to pay therefor, the said trustee may, in the name of said Board of Improvement, proceed by mandamus or in any other manner that it thinks best, to compel the levying of such assessments as may be required to pay all of said bonds with interest and expenses.

Said District further agrees that if default takes place in the payment of any of said bonds or coupons, there shall be paid to the said trustee out of the proceeds of said assessment and before the payment of the principal or interest of said bonds, its reasonable compensation as trustee for protecting the interests of the holders of said bonds, together with reasonable compensation to such counsel as the trustee may find it necessary to employ.

In case of the resignation of said trustee, its refusal to act, or its ceasing to exist, the holders of a majority of the bonds aforesaid may, by an instrument filed in the office of the recorder of Pulaski County, Arkansas, appoint a new trustee, who shall have all the powers and rights of the trustee herein named; and a majority of the bondholders may, in like manner, by filing a like instrument, remove the trustee at any time, and appoint a substitute, who shall then have the same powers as the one herein named. The trustee may at any time resign the trust on ten days notice [fol. 15] by mail addressed to the Chairman or Secretary of the Board of Commissioners, at the Postoffice of Little Rock, Arkansas.

The District will pay the cost of recording and satisfying this pledge.

If any of the bonds hereby secured are not paid at maturity, they shall bear interest at the rate of ten per cent per annum until paid.

The said trustee shall be entitled to reasonable compensation by the District for all services performed and reimbursement for expenses incurred in the performance of its duties under this trust.

The said trustee shall be responsible only for willful misconduct in the execution of its trust. The recitals of facts contained in said bonds and in this instrument are statements of the said district, and shall not be considered as made by the trustee. The trustee shall not be required to see that this pledge is properly executed or recorded,

nor shall it be required to take notice or deemed to have notice of any default of the said Improvement District, unless it shall have been specifically notified in writing of such default; nor shall it be required to take action under this pledge until it shall have been indemnified to its satisfaction by the holder or holders of the bonds above mentioned, or some of them, against loss or expense by reason of taking such action.

In witness whereof, the said Street Improvement District Number 513 of the City of Little Rock, Arkansas, has caused this instrument to be executed under the hands of its commissioners and under its corporate seal, this 21st day of June, 1930.

[fol. 16] IN CHANCERY COURT OF PULASKI COUNTY

SEPARATE ANSWER OF C. C. KAVANAUGH, TRUSTEE

The defendant, C. C. Kavanaugh, Trustee, admits that his assessments of $191.10 for the year 1932 and of $191.10 for the year 1933 are delinquent and unpaid and that the plaintiffs are entitled to a decree charging his said property as delinquent for said amounts and condemning it to be sold if they are not paid.

He denies that there should be added to the amount due a twenty per cent penalty and an attorney's fee, but admits that a penalty of 3% should be added. He says that Section 5673 of Crawford & Moses' Digest, authorizing a penalty of twenty per cent, has been amended by Section 1 of Act 278 of the General Assembly of the State of Arkansas of the year 1933 to provide for a penalty of only three per cent; and that Section 5678 of Crawford & Moses' Digest, authorizing an attorney's fee, has been repealed by Section 2 of said Act.

He denies that the decree should provide only ten days for the payment of the amount adjudged to be due and that notice of the sale be given for only twenty days. He says that Section 5684 of Crawford & Moses' Digest, providing for payment in ten days and for only twenty days' notice, has been amended by Section 4 of said Act 278 to provide for payment in twelve months and for six months' notice of the sale.

He denies that the decree should provide for only two years from the date of the sale in which to redeem and [fol. 17] for ten per cent interest on redemption. He says that Section 2 of Act 359 of 1925, giving two years in which to redeem, and Section 5644 of Crawford & Moses' Digest providing that ten per cent interest be paid on redemption, have been amended by Act 252 of 1933, to provide four years for redemption and the payment of only six per cent interest.

He further denies that the decree should provide that upon delivery of the certificate of purchase, the purchaser should have possession of the land and premises pending the redemption without accountability for rents. He says that Section 5642 of Crawford & Moses' Digest, giving said right to possession without accountability for rents, has been repealed by Act 129 of 1933.

Wherefore, the defendant prays that the court dismiss those parts of the complaint praying for a penalty of 20% and attorney's fees, praying that the decree provide only ten days for the payment of the amount adjudged to be due and if not paid notice of sale be given for only twenty days, for redemption in two years, for payment of ten per cent interest on redemption and for possession without accountability for rents pending redemption; and for all other proper relief.

S. L. White, Solicitor for Defendant, C. C. Kavanaugh, Trustee.

[fol. 18] In Chancery Court of Pulaski County

Demurrer to Answer

The plaintiffs demur to the answer of the defendant C. C. Kavanaugh, Trustee, for the reason that it does not state facts sufficient to contsitute a defense.

They say that Section 5673 of Crawford & Moses' Digest providing for a penalty of twenty per cent, Section 5678, providing for a reasonable attorney's fee, Sections 5684 and 5691 providing that if payment is not made in ten days the property should be condemned and sold upon twenty days' notice, Section 5644, as amended by Act 359 of 1925, providing for only two years in which to redeem

from the sale by payment of the purchase price and ten per cent interest, and Section 5642 providing that the purchaser at the sale shall have possession pending redemption without accountability for rents, all became a part of the contract for the sale and purchase of the bonds, and therefore, Acts 278, 252 and 129 of the General Assembly of Arkansas for the year 1933, which purport to amend or repeal said acts, so as to deprive the bondholders of any effective remedy for the enforcement of their rights, are void as to the bonds described in the complaint herein, which were issued and sold before those statutes were adopted, because in contravention of Art. 2, Sec. 17 of the Constitution of Arkansas, and Art. 1, Sec. 10, Cl. 1 of the Constitution of the United States, which forbid the passage of any law impairing the obligation of contracts, [fol. 19] and the Fourteenth Amendment to the Constitution of the United States, which forbids any state to deprive any person of his property without due process of law.

Rose, Hemingway, Cantrell & Loughborough, Solicitors for Plaintiffs.

[fol. 20] IN CHANCERY COURT OF PULASKI COUNTY

[Caption omitted]

DECREE

On this day this cause coming on to be heard as to the defendant, C. C. Kavanaugh, Trustee, the plaintiffs being present by their solicitors, Rose, Hemingway, Cantrell & Loughborough, and the defendant Kavanaugh by his solicitor, S. L. White, the same is submitted to the court for its consideration and judgment upon the complaint of the plaintiffs, with its exhibit, the separate answer of the defendant Kavanaugh, and the demurrer of the plaintiffs to said answer; and the court being well and sufficiently advised as to all matters of law arising herein doth overrule said demurrer, to which action of the court the plaintiffs at the time excepted and asked that their exceptions be noted of record, which was accordingly done, and the plain-

tiffs electing to stand on their demurrer, it is by the court considered, ordered, adjudged and decreed as follows:

That Lots 7, 8, 9 and 10 of Block 7, City of Little Rock, be and the same are hereby charged with the sum of $382.20 as the assessment of benefits due for the years 1932 and 1933 in Street Improvement District No. 513 of the City of Little Rock, Arkansas, together with the sum of $11.47, the three per cent penalty provided by law to be assessed thereon, and costs of this cause as to said defendant. If said sums are not paid within twelve months from this date, the Commissioner of this court hereinafter named, [fol. 21] after he shall have advertised the time, terms and place of sale for a period of six months by publication in some newspaper published in Pulaski County, Arkansas, and having a bona fide circulation therein, by at least two insertions, shall sell said lots, or such part thereof as may be necessary, at the east door of the Pulaski County Court House at public auction to the highest bidder for cash. H. S. Nixon, the Clerk of this court, is hereby appointed Commissioner to execute this decree. Upon the sale of said property as aforesaid and the confirmation of such sale by the court, the said Commissioner shall execute and deliver to the purchaser a certificate of purchase to said property, and if same is not redeemed within four years from date of the sale by payment to the clerk of this court of the purchase price at said sale, together with interest thereon at the rate of six per cent (6%) per annum, then the said Commissioner shall execute and deliver a deed to the purchaser or his assignee.

To those parts of the decree awarding a penalty of three per cent instead of twenty per cent, providing twelve months for payment instead of ten days, six months' notice before sale instead of twenty days, four years for redemption instead of two years, and six per cent interest per annum on redemption instead of ten per cent, and to the failure of the decree to award a reasonable attorney's fee and to provide for possession by the purchaser without accountability for rent pending redemption, plaintiffs except because they deprive the bondholders of the said district of rights protected by the provisions of the Constitu- [fol. 22] tions of Arkansas and of the United States forbidding the passage of laws impairing the obligation of contracts and because they deprive the said bondholders of

property rights in violation of the Fourteenth Amendment to the Constitution of the United States; and they pray an appeal to the Supreme Court of Arkansas, which is granted.

Taylor Roberts, Special Chancellor.

8/2/34.

[fol. 23] IN SUPREME COURT OF ARKANSAS

3635

W. B. WORTHEN COMPANY, TRUSTEE, et al., Appellants,

vs.

DELINQUENT LANDS, Appellee

Appeal from Pulaski Chancery Court

JUDGMENT—October 15, 1934

This cause came on to be heard upon the transcript of the record of the chancery court of Pulaski County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said appellant all their costs in this Court in this cause expended, and have execution thereof.

Opinion by Humphreys, J.

Justices Smith, McHaney and Butler dissent.

[fol. 24] IN SUPREME COURT OF ARKANSAS

W. B. WORTHEN COMPANY, Trustee,

v.

DELINQUENT LANDS

OPINION—October 15, 1934

HUMPHREYS, J.:

This is an appeal from a decree of foreclosure in favor of appellants of certain lands in Improvement District

No. 513 of the City of Little Rock, Arkansas, on account of the failure to pay delinquent assessment of benefits to appellants. Appellants are appealing from the decree in their favor because the court refused to incorporate into the decree a penalty of 20%, costs, a reasonable attorney's fee; and if payment were not made within ten days the property should be sold on 20 days notice, and that if the owner did not redeem from the sale within two years by the payment of the purchase price and 10% interest, the commissioner should deliver to the purchaser a deed, and that immediately upon the delivery of the certificate of purchase after the sale should be confirmed, the purchasers should have possession pending redemption without accountability for rents. These requested provisions were in accordance with the statutes in force and effect at the time the district was organized in 1930 and at the time the bonds were issued and sold to construct the improvement. These remedial provisions of the statutes were amended or repealed by Acts 278, 252, and 129 of the Acts of the Legislature of 1933 so as to provide a penalty of 3%, no attorney's fee, twelve months for payment, six months notice of sale, redemption within four years by payment of the purchase price and 6% interest, and no right to possession without accountability for rents pending redemption.

[fol. 25] In rendering the decree of foreclosure, the court followed the remedial provisions contained in Acts 278, 252 and 129 of 1933, so the only question presented upon appeal and insisted upon by appellants for a reversal of the decree is whether the later acts are in contravention of Article II, Sec. 17 of the Constitution of Arkansas and Article I, Sec. 10 of the Constitution of the United States, which forbid the passage of any law impairing the obligation of contracts and of the Fourteenth Amendment to the Constitution of the United States, which forbids any State to deprive any person of his property without due process of law. An inspection of the acts of 1933 called in question, will disclose that they are entirely remedial in their nature and do not attempt to take away any of the vested rights of appellants such as their lien and right to foreclose same, but simply reduce the penalty and extend the time required to foreclose in case of default and to redeem from a sale and are, in our judgment, reasonable changes to meet the

exigencies of the depression and to give property owners a reasonable time and opportunity to save their homes. The constitutionality of Act 278 of 1933 was attacked from every conceivable angle in the case of Sewer Improvement District No. 1 of Wynne v. Delinquent Lands, 188 Ark. 738, and this court upheld the act. In deciding that case the authorities were fully reviewed, and it is unnecessary to review them again. Suffice it to say that the case referred to governs and controls the instant case. There is no difference between the three acts in tenor and effect, so the reasoning as to the validity of Act 278 is applicable to Acts 252 and 129.

[fol. 26] No error appearing, the decree is affirmed.

DISSENTING OPINION

McHANEY, J.:

I dissent for the reasons stated in my dissenting opinion in Sewer Imp. Dist. No. 1 of Wynne v. Delinquent Lands, 188 Ark. 738, and am authorized to say that Mr. Justice Smith and Mr. Justice Baker concur therein.

CONCURRING OPINION

JOHNSON, C. J. (concurring):

I concur in all that is said in the court's opinion and in addition thereto I assign the following reasons supporting or tending to support the opinion. Act 278 of 1933 was before us for consideration in Sewer Imp. Dist. No. 1 of Wynne v. Delinquent Lands, 188 Ark. 738, and we there declared its provisions not in conflict with the State or Federal Constitutions, and I have nothing to add to the opinion in that case. Acts 252 and 129 of 1933 have not been before us prior to the opinion herein, therefore these elucidations.

Act 252 of 193 has the effect of allowing property owners in all municipal improvement districts in this state four years from date of judicial sale in which to redeem. Appellant's contention is that this act increased the period of redemption from two years (which was allowed under the law when their bonds were issued) to four years, thereby impairing the obligations of their contract. This contention is without merit. Section 5644 of Crawford & Moses' Digest, which is a section of the Municipal Improvement

District act of 1915, by plain terms gives to property owners in all such districts five years in which to redeem from such sales. Appellants contend, however, that the time [fol. 27] given an owner to redeem, by the section supra, was reduced to a period of two years by Act 359 of 1925. Section two of said act of 1925, which is asserted to have effected the change from five years to two years, is as follows:

"Hereafter all persons shall have the right to redeem from the sale for taxes or road, drainage, levee of (or) other improvement districts at any time within two years from the date when such lands are sold by the Commissioner making the sale, and not thereafter; provided, that the provisions of this section shall not apply to property which shall have become delinquent or have been forfeited prior to the passage of this act."

In Roberts v. Owen, 183 Ark. 6, 34 S. W. (2d) 752, we expressly declined to determine whether Act 359 of 1925 was applicable to Municipal Improvement Districts and this question has not yet been decided. If the act of 1925 is not applicable to Municipal Improvement Districts, property owners in such districts had five years to redeem when appellants bonds were issued and sold and Act 252 of 1933, of which appellant now complains, had the effect of reducing the period of redemption instead of increasing it as urged by appellant.

Section 2 of Act 359 of 1925 needs no interpretation. It provides that it is applicable to "road, drainage, levee of (or) other improvement districts." Had it been intended to apply to paving, sewerage, water and such municipal districts, the legislature could and would have so said in plain language. The only conceivable reason asserted as to its applicability to municipal improvement districts is "of (or) other improvement districts", but this phrase has [fol. 28] reference to other improvement districts of the same kind as those specifically enumerated. The rule of ejusdem generis has ever been applied by us under such circumstances. Jones v. State, 104 Ark. 261, 149 S. W. 56; State v. Gallagher, 101 Ark. 593, 193 S. W. 98; Lee v. Huff, 61 Ark. 494, 33 S. W. 846; Eastern Ark. Hedge Fence Co. v. Tanner, 67 Ark. 156, 53 S. W. 886; Matthews v. Kimball, 70 Ark. 451, 66 S. W. 651, 69 S. W. 547; St. L., I. M. & S.

R. Co. v. Love, 74 Ark. 528, 86 S. W. 395; State v. C., R. I. & P. Ry. Co., 95 Ark. 114, 128 S. W. 555; 25 R. C. L., Sec. 240, p. 996.

It appears, therefore, that Act 359 of 1925 is not applicable to municipal improvement districts and for this reason Act 252 of 1933 shortened the period of redemption instead of increasing it and appellant certainly cannot complain at this. Act 129 of 1933 repeals Section 5642 of Crawford & Moses' Digest. This repealed section provides: "In all sales made by commissioners under decrees of chancery courts for foreclosure of delinquent special assessments in drainage, levee, and bridge districts, improvement districts in cities and towns, and in all special assessment districts of every kind, the court may approve the sale subject to the right of redemption, and immediately upon such approval the purchaser shall have the right to possession of the lands and premises so sold and may have process therefor, and such purchaser while so in possession shall not be accountable for rents upon redemption."

The language of the section, "The court may approve the sale subject to the right of redemption and immediately upon such approval the purchaser shall have the right to possession, etc.", clearly vests in the chancery courts of [fol. 29] the state a discretionary power in the approval of all sales effected in such courts by municipal improvement districts. It is common knowledge that such sales are not approved in many instances until the time for redemption has expired. No one would assert that the chancery courts could be subjected to mandamus under this section of the statute and compelled to approve a report of sale prior to the expiration of the period of redemption. Such being the law, appellant took no vested right by reason of said section and cannot complain at its repeal.

After further consideration, I am authorized to say, that Justices Butler, Mehaffy and Humphreys, concur in these views.

[fol. 30] IN SUPREME COURT OF ARKANSAS

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed November 12, 1934

PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the Supreme Court of Arkansas in the above entitled cause, the appellants, W. B. Worthen Company, Bankers, as Trustee, ex rel. the Board of Commissioners of Street Improvement District No. 513 of the City of Little Rock, Arkansas, and C. S. Smart and W. H. Miller, as bondholders, hereby pray an allowance of appeal from the said decision and decree to the United States Supreme Court and an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said appellants assign the following errors in the records of the proceedings of said case:

1. The Supreme Court of Arkansas erred in holding valid and constitutional as applicable in this case the following Acts of the General Assembly of Arkansas of the year 1933:

Act 278, amending Section 5673 of Crawford & Moses' Digest of the Statutes of Arkansas, by reducing the penalty for the failure of the property owner to pay his improvement district assessments when due from twenty per cent to three per cent; amending Section 5678 of said Digest by taking away the provision for an attorney's fee in the suit to foreclose delinquent assessments; amending Section 5684 by [fol. 31] extending the time for payment of the amount adjudged to be due by the foreclosure decree from ten days to twelve months, and by extending the time for notice of the foreclosure sale from twenty days to six months.

Act 252, in effect amending Section 5644 of said Digest (as amended by Section 2 of Act 359 of 1925), by extending the time for redemption from the foreclosure sale from two to four years and by reducing the interest to be paid on the purchase price on such redemption from ten per cent to six per cent.

Act 129, repealing Section 5642 of said Digest which gave the purchaser at the said foreclosure sale the right to possession pending redemption without accountability for rents.

Said laws, so amended or repealed, were in existence and in force at the time the bonds of Street Improvement District No. 513 of Little Rock were issued and at the time they were sold to the appellants and other bondholders; and the remedies therein provided for the enforcement of the collection of the delinquent assessments became a part of the contract of purchase of the bonds. The Supreme Court of Arkansas by holding valid and constitutional said Acts 278, 252 and 129 deprived the appellants and other holders of bonds of the said improvement district of effective remedies for the enforcement of the collection of the assessments in said District, which remedies were in existence under the laws of the State of Arkansas and became a part of the contract for the purchase of the bonds at the time they were issued and sold. The decree of the court so impairs said remedies as to materially lessen the value of their bonds.

2. The Supreme Court of Arkansas erred in holding that said changes in the remedies for the enforcement of the collection of the delinquent assessments do not take away any vested rights of the appellants and that said changes were reasonable.

[fol. 32] 3. The Supreme Court of Arkansas erred in holding that said Acts as applied in this cause do not impair the obligation of contracts contrary to Article I, Section 10, Cl. 1 of the Constitution of the United States.

4. The Supreme Court of Arkansas erred in holding that said acts do not abridge privileges and immunities of the appellants and other bondholders as guaranteed by the 14th Amendment to the Constitution of the United States and that they do not deprive the appellants and other bondholders of their property without due process of law contrary to the provisions of said Amendment.

Prayer for Reversal

For which errors the appellants, W. B. Worthen Company, Bankers, as Trustee, ex rel. the Board of Commis-

sioners of Street Improvement District No. 513 of the City of Little Rock Arkansas, and C. S. Smart and W. H. Miller, as Bondholders, pray that the said decree of the Supreme Court of the State of Arkansas, dated October 15, 1934, in the above entitled cause, be reversed and a decree rendered in favor of the said appellants, and for costs.

G. B. Rose, A. W. Dobyns, Attorneys for Appellants, Little Rock, Arkansas.

[File endorsement omitted.]

[fol. 33] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 12, 1934.

The appeal herein petitioned for is allowed and ordered upon the execution of a bond for costs by the appellants to C. C. Kavanaugh, Trustee, the appellee, in the sum of $500.00.

C. E. Johnson, Chief Justice of the Supreme Court of Arkansas. (Seal Supreme Court of Arkansas.)

[File endorsement omitted.]

[fols. 34 & 35] Bond on Appeal for $500.00, approved and filed Nov. 12, 1934, omitted in printing.

[fol. 36] Citation in usual form, showing service on S. L. White and John W. Newman, filed Nov. 12, 1934, omitted in printing.

[fols. 37 & 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF APPELLANTS OF POINTS ON WHICH THEY INTEND TO RELY, AND STIPULATION AS TO PRINTING OF RECORD. (Rule 13, Paragraph 9)—Filed Dec. 1, 1934

Appellants adopt their assignment of errors as their statement of the points to be relied upon and say that the entire record, as filed, is necessary for a proper consideration of the case.

G. B. Rose, A. W. Dobyns, Attorneys for Appellants, Little Rock, Arkansas.

We acknowledge service for the appellees of the foregoing statement of the appellants of the points on which they intend to rely, and agree that the entire record, as filed, is necessary for the proper consideration of the case. This 28th day of November, 1934.

S: L. White, John W. Newman, Attorneys for Appellee, Coburn C. Kavanaugh, Trustee, Southern Building, Little Rock, Arkansas.

[fol. 40] [File endorsement omitted.]

Endorsed on cover: File No. 39,184. Arkansas, Supreme Court. Term No. 556. W. B. Worthen Company, Bankers, as Trustee, ex rel. The Board of Commissioners of Street Improvement District No. 513 of the City of Little Rock, Arkansas, et al., Appellants, vs. Coburn C. Kavanaugh, Trustee. Filed December 1, 1934. File No. 556, O. T., 1934.